

EDMUND G. BROWN JR.
Attorney General of the State of California
PAUL T. HAMMERNESS
Supervising Deputy Attorney General
TROY B. OVERTON, State Bar No. 171263
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5516
Fax: (415) 703-5480
Email: Troy.Overton@doj.ca.gov

Attorneys for Defendant JUDGE ROBERT ATTACK
(erroneously named as JUDGE ROBERT ATTACK)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BEVERLY THORP,

Plaintiff,

v.

JUDGE ROBERT ATTACK, et al.,

Defendants.

Case No. C08-01449 JF

**JUDGE ATTACK'S CASE
MANAGEMENT STATEMENT
[LOCAL RULE 16-9(a)]**

Date: August 29, 2008

Time: 10:30 a.m.

**Place: Federal Building
280 South First Street
San Jose, California**

Dept: 3, Fifth Floor

Judge: Hon. Jeremy Fogel

Pursuant to Local Rule 16-9(a), Defendant Judge Robert Attack (erroneously named as Judge Robert Attack), by and through his counsel of record, submit the following case management statement:

1. Jurisdiction and Service:

Judge Attack has filed a motion to dismiss plaintiff's complaint asserting a challenge to subject matter jurisdiction and a failure to state a claim upon which relief can be granted in this action. (See Section 4 below.)

///

///

1 **2. Facts:**

2 On March 14, 2008, Plaintiff Beverly Thorp filed a complaint alleging, among other
3 things, that commencing in January of 2007, Judge Attack was biased, was unprofessional, had a
4 conflict of interest, did not allow her a fair hearing and violated her due process rights during the
5 course of the state court proceedings in which she was a party, *System & Services Technologies,*
6 *Inc. v. Beverly Thorp*, Santa Cruz County Superior Court Case No. CV 155983.

7 **3. Legal Issues:**

8 At present, the only legal issues pending are whether Judge Attack's motion to dismiss
9 pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) will be granted.

10 **4. Motions:**

11 On June 20, 2008, a hearing on Judge Attack's motion to dismiss pursuant to Federal
12 Rules of Civil Procedure 12(b)(1) and 12(b)(6) was held. The Court took the motion under
13 submission.

14 **5. Amendment of Pleadings:**

15 Not applicable at this time.

16 **6. Evidence preservation:**

17 Not applicable at this time.

18 **7. Disclosures:**

19 Not applicable at this time.

20 **8. Discovery:**

21 Not applicable at this time.

22 **9. Class Actions:**

23 Not applicable to this case.

24 **10. Related Cases:**

25 None pending at this time.

26 **11. Relief:**

27 Judge Attack contends that he is not liable for any of plaintiff's alleged damages.

28 ///

1 **12. Settlement and ADR:**

2 On August 14, 2008, the ADR Unit, USDC, Northern District of California filed a
3 "Notice Re: Noncompliance with Court Order" in this action requiring the parties to file an ADR
4 Certification and either a stipulation selecting an ADR process or notice of need for ADR phone
5 conference. Judge Attack respectfully requests the Court stay all ADR requirements in this action
6 until after all jurisdictional issues and challenges to plaintiff's claims for relief have been
7 resolved.

8 **13. Consent to Magistrate Judge For All Purposes:**

9 On April 3, 2008, Judge Attack filed a Declination to Proceed Before a Magistrate Judge
10 and Request for Reassignment to a United States District Judge [Docket No. 5].

11 **14. Other References:**

12 Not applicable at this time.

13 **15. Narrowing of Issues:**

14 Judge Attack's motion to dismiss plaintiff's complaint asserting a challenge to subject
15 matter jurisdiction and a failure to state a claim upon which relief can be granted in this action
16 will narrow the issues.

17 **16. Expedited Schedule:**

18 This case need not be handled on an expedited basis.

19 **17. Scheduling:**

20 Prior to resolution of pending motion, no schedule is needed.

21 **18. Trial:**

22 This determination and assessment cannot be made until after the resolution of the
23 pending motion.

24 **19. Disclosure of Non-party Interested Entities or Persons:**

25 Not applicable to government entities or their agencies.

26 **20. Other Matters:**

27 None at this time.

28 ///

1 Dated: August 15, 2008.

2
3 Respectfully submitted,

4 EDMUND G. BROWN JR.
Attorney General of the State of California

5 PAUL T. HAMMERNESS
6 Supervising Deputy Attorney General

7
8
9 s/s Troy B. Overton
TROY B. OVERTON
10 Deputy Attorney General

11 Attorneys for Defendant JUDGE ROBERT ATTACK
(erroneously named as JUDGE ROBERT ATTACK)

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **THORP, Beverly v. Judge Robert Attack**

No.: **C 08-01449-JF**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 15, 2008, I served the attached **JUDGE ATTACK'S CASE MANAGEMENT STATEMENT [LOCAL RULE 16-9(a)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Beverly Thorp
P. O. Box 2070
Sunnyvale, CA 94087

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 15, 2008, at San Francisco, California.

Rosalinda F. Asuncion

Declarant



Signature